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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

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| Name | WebMD LLC | | |
| Entity | Corporation | Citizenship | Delaware |
| Address | 111 Eighth Avenue New York, NY 10011 UNITED STATES | | |

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| Attorney information | Michael J. Bevilacqua Wilmer Cutler Pickering Hale and Dorr LLP 60 State Street Boston, MA 02109 UNITED STATES michael.bevilacqua@wilmerhale.com Phone:(617) 526-6448 |
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Registration Subject to Cancellation

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| Registration No | 3637020 | Registration date | 06/09/2009 |
| Registrant | New Wave Software, Inc. 8833 Chapel Square Lane Suite C Cincinnati, OH 45249 UNITED STATES | | |


Goods/Services Subject to Cancellation


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| <p>Class 009. First Use: 2006/10/15 First Use In Commerce: 2007/02/15</p> <p>All goods and services in the class are cancelled, namely: Computer software for use in recording, tracking, and reporting patient status, medical staff tasks, medical staff patient assignments, medical equipment status, and beds status, and for use in ordering laboratory and other types of tests, entering nursing assessment information, generating physician charts, and generating patient discharge instructions, all in the field of health care; computer software for use in tracking and managing patient medical procedures, patient laboratory orders, patient medications, patient medical history, visitor coding information, and hospital billing information, and for maintaining complete patient records, for recording the administration of clinical patient care tasks, for patient service scheduling, for patient and insurance billing, and for exchange of information over a local area network and private secure wide area network; computer software for use in hospital rooms at bedside to record the administration of clinical care, to place orders, and to report patient status, for use with hand-held personal computers, with voice, touch-screen, text and pen input, and with phones and pagers, all in the field of the healthcare industry</p> |
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Grounds for Cancellation

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| Priority and likelihood of confusion | Trademark Act section 2(d) |
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Marks Cited by Petitioner as Basis for Cancellation


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| U.S. Registration No. | 2349285 | Application Date | 01/16/1998 |
| Registration Date | 05/16/2000 | Foreign Priority Date | NONE |
| Word Mark | WEBMD | | |
| Design Mark |  | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 042. First use: First Use: 1997/12/15 First Use In Commerce: 1998/01/07 computer services, namely, providing medical information by way of a World Wide Web page accessible via global computer network | | |

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| U.S. Registration No. | 2394818 | Application Date | 12/07/1998 |
| Registration Date | 10/17/2000 | Foreign Priority Date | NONE |
| Word Mark | WEBMD | | |
| Design Mark |  | | |
| Description of Mark | NONE | | |
| Goods/Services | <p>Class 035. First use: First Use: 1998/03/00 First Use In Commerce: 1998/03/00 On-line computer services - namely, providing transaction services to consumers, providers, administrators and other participants in the health care industry via an on-line computer network, namely, referral services</p> <p>Class 036. First use: First Use: 1998/03/00 First Use In Commerce: 1998/03/00 On-line computer services-namely, providing transaction services to consumers, providers, administrators and other participants in the healthcare industry via an on-line computer network, namely, insurance eligibility and verification, providing on-line brokerage services, and providing general information to consumers, providers, administrators and other participants in the health care industry via an on-line computer network in the field of insurance</p> <p>Class 038. First use: First Use: 1998/03/00 First Use In Commerce: 1998/03/00 On-line computer services - namely, providing communications services to consumers, providers, administrators and other participants in the healthcare industry via an on-line computer network, namely, phone networks, fax, answering services, paging services, active message notification, e-mail and voice mail</p> <p>Class 041. First use: First Use: 1998/03/00 First Use In Commerce: 1998/03/00</p> | | |

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| | <p>On-line computer services - namely, providing education services to consumers, providers, administrators and other participants in the healthcare industry via an on-line computer network, namely, on-line interactive courses in the fields of sports and fitness, nutrition, dieting, wellness, sexuality, law, insurance, and web site development and management, and providing general information to consumers, providers, administrators and other participants in the health care industry via an on-line computer network in the field of sports</p> <p>Class 042. First use: First Use: 1998/03/00 First Use In Commerce: 1998/03/00</p> <p>On-line computer services- namely, providing on-line medical information and on-line medical journals and medical reference databases to consumers, providers, administrators and other participants in the healthcare industry, hosting the web sites of others on a computer server for a global computer network, and providing general information to consumers, providers, administrators and other participants in the health care industry via an on-line computer network in the fields of fitness, nutrition, dieting, wellness, sexuality, health care law and website development and management</p> |
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| U.S. Registration No. | 3128335 | Application Date | 11/21/2003 |
| Registration Date | 08/15/2006 | Foreign Priority Date | NONE |
| Word Mark | WEBMD HEALTH MANAGER | | |
| Design Mark | <p style="text-align: center;">WEBMD HEALTH MANAGER</p> | | |
| Description of Mark | NONE | | |
| Goods/Services | <p>Class 044. First use: First Use: 2003/10/14 First Use In Commerce: 2003/10/14</p> <p>On-line services, namely, maintaining secure records concerning the health conditions of individuals and families; providing a database featuring information in the fields of health and healthcare, namely a database that features a calendar and records of interactive discussions and events in the fields of health and healthcare; providing an on-line database of health professionals and medical treatment centers available to the public; providing an interactive computer database in the field of medical diagnostics; providing medical and pharmaceutical information services via an online database of reference materials; telephone information services in the field of healthcare, namely providing news and information concerning healthcare-related topics via telephone lines to subscribers such as physicians and other healthcare professionals; providing information via the Internet in the field of healthcare, namely providing news and information concerning healthcare-related topics to subscribers such as physicians and other healthcare professionals; and providing news regarding medical and health related events via the Internet</p> | | |

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| U.S. Registration No. | 3477973 | Application Date | 04/29/2005 |
| Registration Date | 07/29/2008 | Foreign Priority Date | NONE |
| Word Mark | WEBMD | | |

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| Design Mark |  |
| Description of Mark | NONE |
| Goods/Services | <p>Class 035. First use: First Use: 2003/01/00 First Use In Commerce: 2003/01/00 Licensing computer software for use in analyzing the performance of and quality of care provided by hospitals, and aiding consumers to compare and select hospitals; health care utilization and review services; business management consultation, namely, development of health care delivery systems for independent practice associations, medical clinics and other forms of physician organizations</p> <p>Class 038. First use: First Use: 1998/03/00 First Use In Commerce: 1998/03/00 Providing multiple-use access to a global computer information network in the field of health care</p> <p>Class 042. First use: First Use: 2003/01/00 First Use In Commerce: 2003/01/00 Providing health information and analysis in the nature of the performance of and quality of care provided by hospitals via a global computer network; database development services in the field of health care; computer services, namely, providing analysis of computer databases in the field of health care; computer software development; maintenance of computer software for others; providing temporary use of on-line non-downloadable software for health risk assessment and profiling for use in the field of preventative health; quality assurance services in the field of health care</p> <p>Class 044. First use: First Use: 2003/01/00 First Use In Commerce: 2003/01/00 Consulting and counseling services in the field of preventative health care, namely, establishing health risk assessment profiles to identify personal and group health risks, personal and group health risk counseling, health risk intervention, health promotion, health risk and behavior modification, and preventative medical assessment and screening; Consulting services in the field of medical triage protocols, policies, and practices</p> |

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| Attachments | <p>75418921#TMSN.jpeg (1 page)(bytes) 75600384#TMSN.gif (1 page)(bytes) 76561379#TMSN.gif (1 page)(bytes) 78619789#TMSN.jpeg (1 page)(bytes) WEBED nop.PDF (9 pages)(465994 bytes)</p> |
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

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| Signature | /barbara a. barakat/ |
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| Name | Barbara A. Barakat |
| Date | 07/23/2009 |

procedures, patient laboratory orders, patient medications, patient medical history, visitor coding information, and hospital billing information, and for maintaining complete patient records, for recording the administration of clinical patient care tasks, for patient service scheduling, for patient and insurance billing, and for exchange of information over a local area network and private secure wide area network; computer software for use in hospital rooms at bed-side to record the administration of clinical care, to place orders, and to report patient status, for use with hand-held personal computers, with voice, touch-screen, text and pen input, and with phones and pagers, all in the field of the healthcare industry, and hereby petitions to cancel the registration of the mark "WebED" for these goods.

As grounds therefor, it is alleged that:

1. Petitioner is now, and has been for some time, engaged in providing health information services to consumers, physicians and healthcare professionals and practice management services.

2. Since at least as early as January 1998, Petitioner and its predecessors in interest (hereinafter "Petitioner") have used the service mark and trade name WEBMD (The "WEBMD" Mark") to identify a variety of healthcare related services directed to all aspects of the healthcare industry, including consumers, physicians, payors, laboratories, administrative personnel and other healthcare professionals and institutions. Since that time, Petitioner has displayed its mark and its name as WebMD, that is, with the "eb" in "Web" in lower case letters and the letters "W" and "MD" in upper case letters.

3. Petitioner provides services through an Internet website operated under the domain name <webmd.com> (the "WebMD Site"). Through the WebMD Site, Petitioner provides objective and trusted healthcare and lifestyle information to consumers, including

access to high quality health and wellness news articles and features, and decision-support services that help consumers make better informed decisions about medical diagnoses and conditions, drug and treatment options, health risks and healthcare providers. Petitioner also provides information to physicians, payors, laboratories, administrative personnel and other healthcare professionals and institutions, such as information relating to business management consultation, development of health care delivery systems, healthcare consulting, development of medical triage protocols, policies, and practices, and development and analysis of computer databases. Through this site, and third party sites through which it provides branded health and wellness content, tools and services, Petitioner currently reaches more than 61 million visitors per month, making WebMD the leading online health destination and has made the WebMD brand among the most recognized and trusted in healthcare.

4. Petitioner, and its predecessors in interest, adopted the trademark "WebMD" in connection with these online computer services in the health care field since at least as early as 1998 and has been using the mark ever since. Such use has been valid and continuous since the date of first use and has not been abandoned.

5. Petitioner is the owner of United States Trademark Reg. No. 2349285, issued May 16, 2000 for the mark WEBMD, in connection with computer services, namely, providing medical information by way of a World Wide Web page accessible via global computer network.

6. Petitioner is also the owner of United States Trademark Reg. No. 2394818, issued October 17, 2000 for the mark WEBMD in connection with on-line computer services - namely, providing transaction services to consumers, providers, administrators and other participants in the health care industry via an on-line computer network, namely, referral services; on-line computer services-namely, providing transaction services to consumers, providers,

administrators and other participants in the healthcare industry via an on-line computer network, namely, insurance eligibility and verification, providing on-line brokerage services, and providing general information to consumers, providers, administrators and other participants in the health care industry via an on-line computer network in the field of insurance; on-line computer services - namely, providing communications services to consumers, providers, administrators and other participants in the healthcare industry via an on-line computer network, namely, phone networks, fax, answering services, paging services, active message notification, e-mail and voice mail; on-line computer services - namely, providing education services to consumers, providers, administrators and other participants in the healthcare industry via an on-line computer network, namely, on-line interactive courses in the fields of sports and fitness, nutrition, dieting, wellness, sexuality, law, insurance, and web site development and management, and providing general information to consumers, providers, administrators and other participants in the health care industry via an on-line computer network in the field of sports; and on-line computer services- namely, providing on-line medical information and on-line medical journals and medical reference databases to consumers, providers, administrators and other participants in the healthcare industry, hosting the web sites of others on a computer server for a global computer network, and providing general information to consumers, providers, administrators and other participants in the health care industry via an on-line computer network in the fields of fitness, nutrition, dieting, wellness, sexuality, health care law and website development and management.

7. Petitioner is also the owner of United States Trademark Reg. No. 3128335, issued October 15, 2006 for the mark WEBMD HEALTH MANAGER in connection with On-line services, namely, maintaining secure records concerning the health conditions of individuals and

families; providing a database featuring information in the fields of health and healthcare, namely a database that features a calendar and records of interactive discussions and events in the fields of health and healthcare; providing an on-line database of health professionals and medical treatment centers available to the public; providing an interactive computer database in the field of medical diagnostics; providing medical and pharmaceutical information services via an online database of reference materials; telephone information services in the field of healthcare, namely providing news and information concerning healthcare-related topics via telephone lines to subscribers such as physicians and other healthcare professionals; providing information via the Internet in the field of healthcare, namely providing news and information concerning healthcare-related topics to subscribers such as physicians and other healthcare professionals; and providing news regarding medical and health related events via the Internet.

8. Petitioner is also the owner of United States Trademark Reg. No. 3477973, issued July 29, 2008 for the mark WEBMD in connection with licensing computer software for use in analyzing the performance of and quality of care provided by hospitals, and aiding consumers to compare and select hospitals; health care utilization and review services; business management consultation, namely, development of health care delivery systems for independent practice associations, medical clinics and other forms of physician organizations; providing multiple-use access to a global computer information network in the field of health care; providing health information and analysis in the nature of the performance of and quality of care provided by hospitals via a global computer network; database development services in the field of health care; computer services, namely, providing analysis of computer databases in the field of health care; computer software development; maintenance of computer software for others; providing temporary use of on-line non-downloadable software for health risk assessment and profiling for

use in the field of preventative health; quality assurance services in the field of health care; consulting and counseling services in the field of preventative health care, namely, establishing health risk assessment profiles to identify personal and group health risks, personal and group health risk counseling, health risk intervention, health promotion, health risk and behavior modification, and preventative medical assessment and screening; consulting services in the field of medical triage protocols, policies, and practices.

9. Registration No. 3,637,020, sought to be canceled, is for the trademark "WebED," registered for use in connection with computer software for use in recording, tracking, and reporting patient status, medical staff tasks, medical staff patient assignments, medical equipment status, and beds status, and for use in ordering laboratory and other types of tests, entering nursing assessment information, generating physician charts, and generating patient discharge instructions, all in the field of health care; computer software for use in tracking and managing patient medical procedures, patient laboratory orders, patient medications, patient medical history, visitor coding information, and hospital billing information, and for maintaining complete patient records, for recording the administration of clinical patient care tasks, for patient service scheduling, for patient and insurance billing, and for exchange of information over a local area network and private secure wide area network; computer software for use in hospital rooms at bed-side to record the administration of clinical care, to place orders, and to report patient status, for use with hand-held personal computers, with voice, touch-screen, text and pen input, and with phones and pagers, all in the field of the healthcare industry. The date of first use claimed by the Registrant is October 15, 2006.

10. Petitioner's service mark "WEBMD" and Registrant's trademark "WebED" are confusingly similar because they differ in spelling by one letter only and because the Registrant

uses upper and lower cases in the same manner in which Petitioner commonly displays its mark, “WebMD.”

11. Petitioner’s service mark “WEBMD” and Registrant’s trademark “WebED” are confusingly similar in appearance and sound.

12. Petitioner’s service mark “WEBMD” and Registrant’s trademark “WebED” create a confusingly similar commercial impression.

13. The services provided by Petitioner are closely related to the claimed goods of the Registrant and will travel in the same channels of trade to the same potential purchasers.

14. Petitioner began to use its mark in 1998, long before the date of first use of the Registrant, October 2006.

15. Petitioner’s service mark “WEBMD” is symbolic of the extensive goodwill and recognition built up by Petitioner through continuous use of said mark over a substantial period of time.

16. Petitioner has expended considerable effort and expense in promoting its service mark “WEBMD” and the services provided under such mark, with the result that the purchasing public has come to know, rely upon, and recognize the services of Petitioner by such mark. Petitioner has an exceedingly valuable goodwill established in its mark.

17. If the Registrant is permitted to retain the registration sought to be canceled, and thereby, the prima facie exclusive right to use in commerce the mark “WebED” on goods closely related to the services provided by Petitioner, Petitioner’s mark, and the goodwill established in its mark, will be diluted.

18. If the Registrant is permitted to retain the registration sought to be canceled, and thereby, the prima facie exclusive right to use in commerce the mark “WebED” on goods closely

related to the services provided by Petitioner, confusion in trade is likely to result from any concurrent use of Petitioner's mark and that of the Registrant, all to the great detriment of Petitioner, who has expended considerable sums and efforts in promoting its mark and services.

19. Purchasers are likely to consider the services of the Registrant sold under the mark "WebED" as emanating from Petitioner.

20. Concurrent use of the mark by Registrant and the Petitioner may result in irreparable damage to Petitioner's reputation and goodwill, if the goods provided by the Registrant are inferior, since purchasers are likely to attribute the source of the Registrant's goods to the Petitioner.

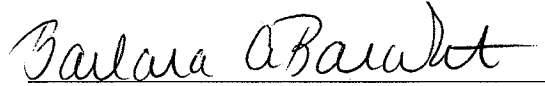
21. If the Registrant is permitted to retain the registration sought to be canceled, a cloud will be placed on Petitioner's title in and to its service mark "WEBMD" and on its right to enjoy the free and exclusive use thereof in connection with the provision of its services, all to the great injury of Petitioner.

WHEREFORE, Petitioner deems that it is and will be damaged by Registration No. 3,637,020, and petitions for cancellation thereof.

The \$300.00 fee required by 37 C.F.R. §2.6(a) (16) for this Petition should be charged to
Hale and Dorr LLP's Deposit Order Account No. 08-0219.

Respectfully submitted,

WEBMD LLC



Michael J. Bevilacqua

Reg. No. 31,091

Barbara A. Barakat

Reg. No. 32,190

Attorneys for Petitioner

Wilmer Cutler Pickering Hale and Dorr LLP
60 State Street
Boston, Massachusetts 02109
(617) 526-6154
July 23, 2009

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Petition to Cancel was served by first-class
mail, postage-prepaid, this 23rd day of July, 2009, upon:

New Wave Software, Inc.
8833 Chapel Square Ln Ste C
Cincinnati, OH 45249-4706



Barbara A. Barakat